IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 730 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MADHUKAR SONAJI PARVE
VERSUS
STATE OF GUJARAT

Appearance:
MR BHARGAV BHATT for Petitioner
MR SAMIR J DAVE for Respondent-State
MR AMIT J SHAH for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/03/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. It is a case where in the criminal complaint filed by the petitioner against the officers of the Customs Department for offence under the Prevention of Corruption Act, the C.B.I. submitted `C' Summary (final report under section 173 of Cr.P.C.) to the Special Judge, Ahmedabad. Under the impugned order the learned court held that there was demand and acceptance of money by the accused. It is further held that it is not necessary that money should be recovered from the pocket of the accused. After referring to the decision of this Court in the case of State of Gujarat vs. reported in 1999 (1) 831, it is held that in the case the amount was lying on the table and the panchnama clearly shows that the amount was demanded by the Customs Officers and both Customs Officers accepted the amount and both persons were counting the currency notes, this evidence clearly shows that there is substance in the complaint of the complainant. Commenting on the final report submitted by the CBI, the learned Court held that in the facts aforesaid, it cannot be said that there is insufficient evidence in the present case for proceeding further. It is further held that the complaint clearly shows that two persons, Mr. Rajguru and Mr. Vichare accused No.3 and 4, had come to the firm of the complainant and they demanded the said bribe. Referring to the panchnama, the Court said it also shows that accused Nos. 1 and 2 had also demanded money as bribe from the complainant. However, the learned court below held that there is no evidence in the panchnama that Mr. Ghanshyam H. Bhamthani, accused No.5 was present and hence, there is no evidence against this accused to proceed against him. Learned court below agreed that there is some evidence against accused Nos. 1 to 4 for the alleged offences. The learned Court has also recorded its agreement with the contention of Mr. Bhatt, counsel for the complainant, that there is no ground for passing any order for further investigation in this case. After recording of these findings, learned court below consider the case whether it can take cognizance in absence of sanction for prosecution on record against the said four Customs Officers. After referring to the provisions of sections 190, 195 to 199 of Cr.P.C. and section 5 (2) of the Prevention of Corruption Act, the court below held that it cannot take cognizance of the alleged offences without previous sanction and raised hands in helplessness by concluding. "Therefore, there is no alternative, but to accept the final report of CBI for closure of the case". Accordingly, report has been accepted and the accused were ordered to be discharged in this case.

#. A larger question does arise - whether where a final report has been submitted i.e. `C' Summary after investigation by the CBI, there would not have been any occasion for the CBI to take sanction for the prosecution of the accused, though the Court is not in agreement with this report, it is justified to raise hand in helplessness? It is not the case of CBI that it has applied to the competent authority for taking sanction for prosecution of these accused. It is also not the case of the CBI that it applied for taking sanction for prosecution of these accused persons to the competent authority and competent authority declined to grant sanction for their prosecution. In the matter where final report has been submitted naturally it is a a case where CBI needs not to take any sanction for the prosecution. It is true that unless under section 19 of the Prevention of Corruption Act the sanction has been granted for prosecution, the Court would not have been in a position to take cognizance of the case disagreeing with the final report of the CBI but how far it is justified by the court to show its total helplessness in the matter and to go to the extent of discharging accused persons and closing the case. In this case, the court has not in fact and substance, accepted the final report submitted by the CBI against the accused petitioners No.1 to 4. The Court held that, prima-facie, case has been made out against the accused No.1 to 4 and further investigation needs not to be made. This is a stage where the Court has to take cognizance of the matter but in this case there may be a legal hindrance in the way of the Court and it would have been correct not to take cognizance. But after recording of these findings, the Court is not justified to discharge the accused on this ground i.e. sanction has not been given for their prosecution. This discharge order could have been, in the facts of this case, where the CBI has produced documentary evidence that the sanction for the prosecution of the accused has not been granted by the competent authority. From final report which is there on the record, I do not find that sanction of prosecution of these accused has not been given by the competent authority. It is complaint of the people at large and also a fact which is said to have been accepted at the highest level that amongst the officers of the Central Govt. or State Govt. corruption is rampant, and if in such matters the Court subordinate to this court, raise hands in helplessness, what will happen to the country. At this stage where the Court has reached, instead of discharging the accused on the ground what it is stated in the order,

the court should have given direction to the CBI to apply to the competent authority for grant of sanction for prosecution of these accused Nos. 1 to 4. It is true that where sanction has not been given then Court has to pass appropriate order in accordance with law, but not at this stage what it has been done and more so and in the manner and fashion as it reflects from the impugned order.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the court below dated 30-7-1999 in R.C. No.29/95-ABD is quashed and set aside. It is hereby held that prima-facie case has been made out against the accused Nos. 1 to 4 for the offence complained of by the petitioner and final report submitted by the CBI cannot be accepted. However, cognizance in the matter cannot be taken unless competent authority gives sanction for their prosecution. As stated earlier in the order, it is not the case of the CBI that the competent authority has not granted sanction for prosecution of these accused. Central Bureau of Investigation is directed to forthwith apply for grant of sanction for prosecution of these accused persons namely accused Nos. 1, 2, 3 and 4 and the competent authority is directed to consider this matter and pass appropriate order in accordance with law on the application of the CBI within a period of one month from the date of receipt thereof. In case where the competent authority decides to grant sanction for prosecution of the accused Nos. 1 to 4, the copy of the same may be sent to the CBI, and CBI to file the same in the Court forthwith and then the Court below shall pass the appropriate order of taking cognizance in the matter against the accused. Where the competent authority declines to grant sanction for prosecution of these accused persons, accordingly, the matter be reported to the Court concerned and in that eventuality, ultimately, the case has to be closed. Copy of that order i.e. declining grant of sanction for prosecution of these accused persons may also be sent to the petitioner by regd. post A.D. by the CBI. The petitioner is free to challenge that order of the competent authority by filing a separate petition or by filing revival application in this special criminal application. Rule is made absolute in the aforesaid terms with no order as to costs.

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